## Purpose

The Placer County Air Pollution Control District, the Sacramento Metropolitan Air Quality Management District, and the Yolo-Solano Air Quality Management District, hereinafter collectively referred to as the "Sacramento Regional Air Districts", have developed this regional policy for the purpose of providing equitable treatment for owners/operators of portable engines, especially Tier 0 engines, which are found operating without an Air Resources Board's (ARB's) Portable Equipment Registration Program certificate (PERP). The El Dorado County Air Pollution Control District and the Feather River Air Quality Management District also participated with the development and may join in with the regional effort at a later time. This policy is not intended to cover equipment units such as crushers, concrete batch plants, or blasting operations because they can and should go directly to ARB to get a PERP.

## Background

Each of the Sacramento Regional Air Districts have rules and regulations that require any engine greater than 50 horsepower to obtain permits (Authority to Construct (ATC) and Permit to Operate (PTO)) or registration with the local District prior to operating. None of the Sacramento Regional Air Districts have exemptions that would exempt portable engines from these permit requirements. Many of these rules have been in place since the early 1990s, however historically there has not been active enforcement of these permitting requirements on portable equipment.

In the mid 1990s, some Districts across the state began enforcing permit requirements on portable equipment, which led to strong industry concerns about needing to have permits with each local District, as well as having to pay fees and wait for permit processing in each District. As a result, the California Air Pollution Control Officers Association (CAPCOA) developed a model registration rule, that upon adoption by any of the participating Districts' would provide relief to the operators. Once an operator obtained a portable registration in a District (known as the Administering District) that had adopted the model rule, the operator could legally use that registration in any other District (known as the Participating District) that had also adopted the model rule. This system wasn't satisfactory to industry because not all Districts committed to adopting the model rule (in the end only a handful of Districts did adopt the rule), so industry pushed legislation to establish a statewide program run by the ARB. In 1997, the ARB adopted the PERP program, which had provisions in it that stated that if an owner/operator obtained a PERP and operated in accordance with the provisions of the PERP, that local Districts couldn't require local permits or registrations for the same equipment. One of the requirements of the PERP was that all non-EPA certified engines (manufactured prior to 1996, known as Tier 0 engines) were required to be replaced with an EPA certified (tiered) engine by January 1, 2010. One important nuance of the state program was (and still is) that the PERP program is "voluntary" – operators of portable equipment aren't required to obtain a PERP, but again, local District rules requiring permits are preempted for operators who do get PERP.

Because of many factors, including the "voluntary" nature of the program and the low fees set up in the program for inspections, many Districts statewide still didn't actively enforce the requirement for portable equipment to have registrations or permits, even after the 1997 adoption of a statewide program.

In 2004, the Air Toxics Control Measure (ATCM) for portable diesel engines was adopted, which put in place a requirement that any portable engine that wasn't permitted or registered prior to

January 1, 2006 would be treated as a new engine and therefore was required to meet the latest Tier standard (Tier 2 or Tier 3 depending on the horsepower).

In the past few years, ARB and the Districts collectively began making a concerted effort to get portable equipment into the PERP program. At the beginning of this push, it was estimated by ARB staff that there were approximately 50,000 pieces of portable equipment (engines as well as emission units) operating statewide, and only approximately 10,000 pieces of equipment in the PERP program. Some of the efforts included mailing out information to possible operators as well as having a couple of "amnesty" periods to allow older resident engines the opportunity to get into the PERP. Currently there are approximately 25,000 engines registered in the PERP program, which represents nearly half of the estimated statewide inventory of portable engines. Of the other half, some engines might be registered or permitted with local Districts, but a large percentage are probably operating illegally (without permits).

As the Districts have lately been enforcing the requirement to have permits (or more commonly the preferred "voluntary" option of getting a registration) and enforcing the ATCM, District staff have been finding operators with older engines that do not have permits nor registration. Typically, we settle most violations by imposing some level of monetary penalty (fine) as well as requiring the equipment to get into compliance with all applicable rules and regulations. There is usually some limited period of time (on the order of magnitude of days or weeks) that it takes operators to "get into compliance" with the requirements, and many times Districts have allowed continued operation during this limited time period.

Problem

One problem that the Districts are finding is that for engines that don't meet the latest Tier standard, there is no practical solution to "get into compliance", short of replacing the engine immediately. This is in contrast to an operator who has a PERP for the exact same engine that would have until 2010 to replace a Tier 0 engine, or even longer to replace a Tier 1 or Tier 2 engine (when the fleet average standards become effective in 2013, 2017, or 2020).

Partial Solution

The ARB board felt that too many operators missed the opportunity to enroll in the PERP program because of lack of knowledge, so on December 7, 2006 and March 22, 2007, they amended the PERP and ATCM regulations to provide some relief. The revisions mainly allowed two changes related to this issue: (1) the PERP was changed to allow Tier 1 or Tier 2 engines that were "resident" engines (i.e. were operated in California between 2004 and 2006) to now get into the PERP program; and (2) the ATCM was changed to specify that Districts could permit or register Tier 0 engines.

Remaining Problem

While in theory the revisions help because Districts now "have the ability" to permit or register Tier 0 engines, in practical terms the Sacramento Regional Air Districts don't believe that our current rules allow us to permit (because they wouldn't meet Best Available Control Technology) nor register (most of the Sacramento Regional Air Districts don't have registration rules) the engines without promulgating rule amendments, which would take a lot of resources for a provision which would only last for a couple of years.

If staff of the Sacramento Regional Air Districts catch anybody operating a Tier 0 engine which doesn't have a PERP or if an owner/operator comes to us with a Tier 0 engine, there is no practical way to "get into compliance", so we would be shutting down the business. In many cases, the companies that are operating without the required PERP are the small operators who were the ones that were less likely to have heard about the PERP program.

Proposed solution

As outlined by CAPCOA guidance, one of the options that Districts can use is to enter into a compliance agreement with the Tier 0 engine operator, which states that the unit is in violation for being neither state-registered nor locally permitted and specifying a date certain by which the engine is to be replaced with an ATCM compliant engine. In essence, the Districts are using compliance discretion to allow the continued operation for a limited period of time under specific conditions and requirements.

The Sacramento Regional Air Districts have decided to develop this type of compliance agreement (sample in attachment 1) on a regional basis, so that once an operator enters an agreement with any of the five local Districts, they have coverage in the other four local Districts, without having to enter a separate compliance agreement with the other Districts. Subsequent to reaching consensus, all of the Sacramento Regional Air Districts will sign a Memorandum Of Understanding (MOU) in order to provide assurance to the company entering the agreement that the other Districts will honor the terms of the agreement.

Even though this policy was necessitated to cover the case where the Districts catch owners/operators operating without a permit or registration, the real purpose of this policy is to cover limited operations going forward, not to determine how to settle the Notice of Violations (NOVs) for being caught operating. Settlement for the NOVs will be covered by each separate Districts' existing established settlement procedures. As to the protection going forward, this will also be made available to owners/operators that come to us voluntarily (i.e. those that are in violation for owning a piece of equipment that does not have a permit or registration even if we didn't catch it operating in our region).

There are several premises upon which this regional policy is being developed:

1) The compliance agreements will in essence put the owners/operators of unregistered resident Tier 0 engines on par for future operation with the owner/operators of Tier 0 engines that either entered the PERP program initially in 1997, or in one of the subsequent amnesty periods. In order to obtain any agreement, the company will be required to "disclose" all engines that they own and/or operate which are not permitted nor registered using Exhibit 1 of the agreement.

2) The terms and operating requirements for the Tier 0 engines that enter a compliance agreement should not be easier than for a Tier 0 engine that is in the PERP program, however they could be more restrictive.

   A Tier 0 engine in the PERP program will have to comply with certain conditions such as opacity, CARB fuel, 12 month residency, records, and Nitrogen Oxides (NOx) emission limits, so going forward, an engine with a compliance agreement should have to comply with all of the same requirements.

One example where the region intends to be more restrictive than the PERP is for situations where an engine covered by a compliance agreement will be at a location for more than 5 days. In these cases, the operator shall provide notification to the specific District in which they are operating within 2 days of commencing operation at that site. This concept was previously a requirement of the PERP program, but in recent revisions to PERP, this requirement was removed. However, for the existing PERPs (until they get renewed), the requirement is still listed as a condition. Because of the special circumstances surrounding Tier 0 engines (including that they won't have a placard like a PERP engine), the region has decided that it is important for staff to know where these engines are going to be operated.

The operating requirements will be specified in Exhibit 2 of the compliance agreement.

In the same manner that Districts make case-by-case determinations of whether the use of PERP equipment at a stationary source is a valid use of PERP, each District still has the ability to make a determination of whether the use of portable equipment operating under a compliance agreement is appropriate at a stationary source.

3) The terms and requirements of the compliance agreements (the going forward operation) that each District enters should be essentially identical to the agreements that the other 4 Districts enter. If any of the Districts offer terms that are easier or harder than a different District, there would be a benefit for operators to "shop around" for a better deal.

   One caveat to this premise – if a source does not want to enter this regional compliance agreement, they would always have the option to try and reach a different agreement with a District, but any agreement worked out would only cover operation with that one District, not the region. Also, since the Districts are in consensus with the concepts of this agreement, it is likely that a District won't be willing to enter a separate (less stringent) agreement. However, if there are extenuating circumstances a District might agree to a local only compliance agreement.

4) If we catch an operator with a non-registered engine, the penalty should be more than for someone who comes to us "voluntarily".

5) The compliance agreements are only valid until December 31, 2009.

6) The compliance agreements are not available to rental companies (this industry has been made very well aware of the PERP program, generally has a much quicker engine turnover rate, and the agreement would be impractical to enforce against a renter).

7) The compliance agreements are not transferable.

<u>Options for companies</u>

For operations going forward, the companies (both those we catch and those which come to us voluntarily) have the following options:

1) For a Tier 0 engine, agree to never operate in our region* again. This situation might be used by an operator who is not based in our region and says that they "never" do jobs in our area, so they might not want to enter a compliance

agreement. Another example where this might be used is an operator who does very few jobs in our region and so might decide that it would be more cost effective for any future jobs to just rent PERP engines rather than entering an agreement for their own engine.
* One caveat to this option for any source which had previously entered a compliance agreement with Placer County APCD (prior to the region agreeing upon this regional policy and MOU) which declines to upgrade their Placer compliance agreement to a regional compliance agreement. If a source in this situation gets caught operating in any of the other 4 districts, they could opt to "agree to never operate in the other 4 districts in the region again." Of course, they would still have to settle their violation for being caught and that would be a knowing and willful violation.

2) For a Tier 0 engine, enter the compliance agreement.

3) For a Tier 1 or Tier 2 engine, apply for PERP within 2 weeks, and provide proof when PERP is obtained. (Even though this policy is being developed to handle Tier 0 engines, to provide a bit of consistency, this 3rd option is being listed. If the only engines that an operator owns are Tier 1 or Tier 2, they wouldn't need to enter a compliance agreement, just obtain PERP).

For each engine in their fleet, a company entering an agreement must commit to obtaining PERP registration for those engines that can be registered, and must choose one of the above options for each Tier 0 engine (can choose differently for each engine they own).

If an agreement is entered as a result of a compliance action, all engines in that company's fleet that are a part of that agreement should be entered between the company and that District which took that enforcement action.

It is expected that if an operator comes to a District voluntarily and the company is based in, or has offices in, one of the local Districts, they should enter the agreement with the District in which their office is physically located. However if the company is located outside the region, they should enter an agreement with whichever District they contact.

Proposed penalties

As stated earlier, for operators that we catch, a NOV will be issued and that portion of the violation will be settled by each District's standard settlement policies and/or practices. This allows the Districts to consider aggravating and mitigating circumstances in determining the appropriate penalty. Examples where the penalties would be more severe would be cases where there is evidence that the company knew about permitting/registration requirements. This evidence could be in the form of the District having previous interactions with the company, such as the District having previously sent notices to this company, the company having other units permitted or registered, or the District having previously issued violations to that company. In the most extreme case, if a company is caught operating an unpermitted/unregistered engine and that company has already entered our regional agreement and didn't disclose the engine they are now caught operating, the penalty will be substantially higher.

To enter an agreement, the company will be required to pay a penalty (per engine) as follows:

| Agreement Entered in 2007 | Agreement Entered in 2008 | Agreement Entered in 2009 |
|---|---|---|
| $2,850 | $3,630 | $5,500 |

This penalty amount was determined to be the appropriate amount that the region could reach consensus. Factors considered in this determination included: the potential penalties of $1,000 per day of operation for unknowing violations (and/or higher for knowing violations), the ARB fees that would be charged for a 1996 Tier 1 engine that gets into PERP during this current amnesty, and the alternative permit fees (including back fees for a resident engine) that would be charged if the engine could get a District permit. If an agreement is entered in future years, even though that company gets less time to operate their equipment, the penalties increase because with all the outreach being done statewide, the sources should have heard about the permit requirements and therefore the violation is more serious.

Violations of agreements

If an operator enters an agreement and is later found operating contrary to the terms of the agreement (e.g. exceeding the opacity limit, not having an operational hour meter, or not keeping records), whichever District discovers that violation should issue a NOV and settle that violation in accordance with their standard settlement policies and practices. If the source can't or won't settle any of these types of NOVs, this will cause the agreement to be revoked or voided.

Administrative Procedures

In order to effectively run this program, there will be just a few administrative details:

1) Administering District

The District that enters an agreement will become the "administering District" and they will have a few responsibilities, mainly related to tracking and sharing of information.

a) Upon entering a compliance agreement, the administering District will assign an agreement # and distribute copies (including the agreement and both exhibits) to all of the participating Districts.

b) If a company later cancels an agreement, the administering District will forward that notification to the participating Districts.

c) The administering District will be responsible for tracking to ensure that the company entering the agreement follows through on their requirement to obtain a PERP for any Tier 1 engines, Tier 2 engines, or equipment units in their fleet.

d) Each administering District will maintain a list (table) of companies which they have compliance agreements with and make this list available to the participating Districts upon request.

2) Participating District

All of the Districts in the region that sign the MOU would be “participating Districts”.

a) If a District issues a NOV for an engine not having a permit or registration and the company elects option 1 (to never run in our region again), that District will provide a notification to all of the other participating Districts with that company’s information.

b) If a District issues a NOV against an operator who is in an agreement, that District will provide a notification to all of the other participating Districts with the specifics of the violation.

3) Proof of an engine being in a compliance agreement

In order to simplify enforcement of the program, any operator who enters an agreement will be required to keep a copy of agreement with each engine that is in an agreement.